

REMARKS

This responds to the Office Action dated September 22, 2005.

Claims 1, 3, 5, 7-8, 10-13, 15, 18, 24-25, 29-38, 41, 43-44, 46-49 are amended. Claims 2, 4, 6, 16, 28, and 45 are canceled without prejudice or disclaimer. No claims are added. As a result, claims 1, 3, 5, 7-15, 17-27, 29-44, and 46-49 are now pending in this application.

§112 Rejection of the Claims

Claim 7 was rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness for depending from itself. Applicant has amended claim 1 to clarify the dependency. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

§102 Rejection of the Claims

Claims 1-4, 8-16, 18, 24, 26, 28-29, 31, 35-36, 38-39, 41-45 and 47 were rejected under 35 U.S.C. § 102(b) for anticipation by Levine et al.(U.S. Patent No. 6,058,328). Applicant respectfully traverses for the reasons discussed below.

Concerning claims 1-4 and 8-23

Applicant cannot find in the cited portions of Levine et al. any disclosure of trending an ejection fraction, as currently recited or incorporated in claims 1 and 3. (See Levine at col. 5, lines 17-26.) Applicant also cannot find in the cited portions of Levine et al. any disclosure of comparing trends and detecting differences, as recited in claim 3. Claims 2 and 4 have been cancelled, thereby mooting the basis of rejection of those claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of claims 1 and 3.

Concerning claims 5-7:

Applicant cannot find in the cited portions of Levine et al. any disclosure of detecting a difference between resting and non-resting values of a physiologic cardiac parameter, and using the difference to predict the onset of a sudden cardiac death episode, as presently recited in claims 5 and 7. Claim 6 has been cancelled, thereby mooting the basis of rejection of that claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of claims 5 and 7.

Concerning claims 24-49:

Applicant has amended claim 24 to generally include the subject matter of previously submitted claims 30-32. Applicant cannot find in the cited portions of Levine et al. any disclosure of monitoring, using the trend data, at least one of a drug regimen, a progress of a congestive heart failure disease condition, and an occurrence of a myocardial infarction, as presently recited or incorporated in these claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

§103 Rejection of the Claims

1. Claims 5-7, 17, 19, 25, 27, 30, 32-34, 37, 40, 46 and 48-49 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Levine et al.(U.S. Patent No. 6,058,328) as applied to claims 1-4, 8-16, 18, 24, 26, 28-29, 31, 35-36, 38-39, 41-45 and 47 above. Applicant respectfully traverses.

Applicant respectfully traverses this rejection on the grounds that no *prima facie* case of obviousness presently exists with respect to these claims because all elements are not present in the primary Levine et al. reference, as discussed above with respect to the § 102 rejection, and no secondary reference has been provided to cure such defects in the primary Levine et al. reference.

Applicant respectfully traverses the Office Action's specific assertion that it would have been obvious to include parameters for when a patient is at rest and not at rest. (*See* Office Action ¶ 6.) Claim 5 presently recites using a difference between resting and non-resting parameter values to predict the onset of a sudden cardiac death episode, of which Applicant cannot find any disclosure, teaching, or suggestion in the cited portions of Levine et al. Moreover, if the rejection intends to rely on the Examiner's personal knowledge, Applicant timely objects to any such reliance on Official Notice, and respectfully requests that the Examiner provide a reference in support of such assertion or, alternatively, submit an Affidavit establishing the same. (*See* MPEP § 2144.03)

In view of the above, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

2. Claims 20-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Levine et al.(U.S. Patent No. 6,058,328) as applied to claims 1-4, 8-16, 18, 24, 26, 28-29, 31, 35-36, 38-39, 41-45 and 47 above, and further in view of Koestner et al. (U.S. Patent No. 5,300,093).

Applicant respectfully traverses this rejection on the grounds that no *prima facie* case of obviousness presently exists with respect to these claims because all elements are not present in the primary Levine et al. reference, as discussed above with respect to the § 102 rejection, and because Applicant cannot find anything in the cited portions of Koestner et al. to cure such defects in the primary Levine et al. reference. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.


If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By his Representatives,

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Date December 16, 2005 By 
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 16 day of December, 2005.

Name

Signature